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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MILORAD TEODOR OLIC, Defendant and Appellant.	G045436 (Super. Ct. No. 10CF0359) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed.

Edward J. Haggerty, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton, Melissa Mandel and Scott Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

Following a trial in which Milorad Teodor Olic represented himself, the jury found him guilty of one count of attempted murder (Pen. Code, §§ 187, subd. (a), 664, subd. (a)) (code references are to the Penal Code) and one count of elder and dependent adult abuse (§ 368, subd. (b)(1)). The jury found true the allegations of premeditation and deliberation on the attempted murder charge and the allegations of great bodily injury on elder and personal use of a deadly weapon, on both charges. (§§ 1192.7, 12022, subd. (b)(1), 12022.7, subd. (c).)

After denying Olic's motion to set aside the verdict, the trial court sentenced Olic to a total term of 13 years to life with the possibility of parole for attempted murder and the enhancements, and stayed execution of the three-year sentence for elder and dependent adult abuse and the enhancements.

Olic challenges his conviction on two grounds. First, he argues the trial court erred by granting his request under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*) to represent himself. Second, he argues that instructing the jury with CALCRIM No. 372 (the flight instruction) violated his due process rights.

By granting Olic's *Faretta* request for self-representation, the trial court did not err, under either the law at the time of trial or under the posttrial case of *People v. Johnson* (2012) 53 Cal.4th 519 (*Johnson*). We agree with the reasoning of *People v. Hernández Ríos* (2007) 151 Cal.App.4th 1154, 1158-1159 (*Ríos*) and conclude instructing the jury with CALCRIM No. 372 did not violate Olic's due process rights. Accordingly, we affirm.

FACTS

We view the evidence in the light most favorable to the verdict and resolve all conflicts in its favor. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Barnes* (1986) 42 Cal.3d 284, 303.)

I.

Background to the Crimes

The victim, Teodor Olic (Teodor),[1] is Olic's father and was 80 years old at the time of the crimes. Olic was born in the former Yugoslavia in January 1967. Teodor was working in the former Yugoslavia as director for Eastern Europe for ICN Pharmaceutical, Inc., which has its headquarters in Costa Mesa. ICN Pharmaceutical, Inc., transferred Teodor to the United States in 1988.

Teodor was married to Olic's mother for 23 years. They divorced in 1989, and she died in 2008. Since before Teodor moved to the United States, Olic had expressed hatred and disrespect toward him.

Olic did not move to the United States with his father in 1988. Teodor supported Olic while he was in the former Yugoslavia and paid for his studies in theoretical physics at Belgrade University. In 1991, Teodor invited Olic to come to the United States on a tourist visa to avoid the civil war in the former Yugoslavia.

After arriving in the United States, Olic told his father he did not want to go back to the former Yugoslavia. Olic wanted to go to graduate school in theoretical physics at UCLA, but was denied admission because he lacked certain prerequisites. He was advised to reapply to UCLA after taking some classes. He refused to do so, and never continued his education in the United States.

Once Olic obtained permission to work in the United States, Teodor tried to help him find a job. Olic did not want to work and claimed that all available jobs were too simple for him. According to Teodor, Olic did not work a single day while living in the United States. Teodor paid for all of Olic's bills and expenses, including monthly

[1] We refer to Teodor Olic as Teodor to distinguish him from his son, not out of disrespect.

rent of over $2,000. From October 1991 to the end of 2010, Teodor paid $793,000 in expenses for Olic. Teodor continued to pay those expenses, despite Olic's hostility, because Olic had threatened to burn down Teodor's house and kill his wife and daughter.

After retiring in 2003, Teodor told Olic he no longer could pay the high monthly rent on Olic's apartment. On several occasions in late 2009, Teodor and Olic looked for other apartments, but Olic did not like any of them and simply did not want to move to a less expensive apartment. Teodor stopped paying rent, advised the apartment complex to evict Olic, and made arrangements with movers to take Olic's property from the apartment to a storage unit.

II.

The Crimes

Olic arrived at Teodor's home in the early afternoon of February 15, 2010. He was not welcome there; Teodor had filed for a restraining order against him. Teodor was upstairs, working on the computer, when he heard the doorbell ring. Teodor's wife opened the front door and told Olic he must leave or she would call the police.

After Olic left, Teodor went to look for him and found him, wearing jeans and an orange jacket, at a nearby bus stop. Teodor asked Olic why he had come to his house. Olic replied he had received an eviction notice and had to leave the apartment by 5:00 p.m. that day. Teodor drove Olic to the apartment complex and parked across the street in a fitness center parking lot. They discussed the apartment situation until Teodor said he could no longer listen to Olic's "nonsense." Olic stayed in the car while Teodor got out and walked over to South Coast Plaza, where he stayed for about 40 minutes.

When Teodor returned to the car, he was surprised to find Olic still seated inside. Olic claimed that he could not leave the car without setting off the alarm, so Teodor unlocked the door and said, "now you go." Olic got out of the car and spoke with

Teodor about movers. Teodor opened the car door, sat in the driver's seat, put the key in the ignition, and, ready to leave, asked Olic to shut the front passenger door.

After hesitating for about 30 seconds, Olic got back into the car, placed his left knee on the front passenger seat, and told Teodor, in Serbian, "[t]his is for you from Liubinka. . . . Die, scum. Die scum." Liubinka was Olic's mother. Olic thrust a knife into Teodor's face, striking below the right eye. The knife sliced through the eyeball. Teodor grabbed the knife with his left hand, cutting his hand in doing so, and tried to push Olic back, but Olic was bigger and heavier than Teodor. Olic stabbed Teodor over and over again in the face and head. Olic struck the knife in the corner of Teodor's other eye and broke his nose. When Teodor gasped for air, Olic stabbed him in the mouth. Olic stabbed Teodor 12 to 13 times.

Teodor managed to push Olic back, causing him to fall into the rear seat. Teodor opened the car door and, as he got out, Olic hit him in the back with the knife handle. Teodor took a few steps before turning around to see Olic walk slowly toward his apartment complex. Teodor cried out for help, used his cell phone to call his wife, and told her Olic had stabbed him. A boy standing nearby used his cell phone to call for help, several people came out of the fitness center to help Teodor, and soon an ambulance arrived. While paramedics were treating Teodor, Santa Ana Police Officer Antonio Romero arrived and saw him bleeding from his face and head.

Teodor was taken to a hospital where he underwent surgery for four to five hours and had 35 stitches placed in his mouth. His rotating muscles to his right shoulder had been torn from the bone. It took three and a half months for Teodor's wounds in his mouth to heal. The inside of his mouth remained swollen and tight at the time of trial, and he experiences heavy secretion of salty saliva.

III.

Crime Investigation

After arriving at the crime scene, Officer Romero examined Teodor's car, and, after speaking with Teodor, searched the area for a knife. Unable to find a knife, Officer Romero went to Olic's apartment and found it empty except for a wallet and a driver's license. The landscaping supervisor at the apartment complex, Martin Chagoya, took Officer Romero to a dumpster that had a black trash bag in it. Chagoya earlier had seen Olic take a black trash bag into the trash room and leave the room without the bag. Later, Chagoya saw the black trash bag inside the dumpster. Inside the trash bag, Officer Romero found a black-and-orange reversible jacket and a pair of jeans.

Later, after DNA swabs were taken from Olic and Teodor, blood samples from the cuffs of the orange jacket were DNA tested. The test showed that the major contributing profile was consistent with Teodor's DNA profile, which was rarer than one in one trillion unrelated persons, and that the minor contributing profile was consistent with Olic's DNA profile, which likewise was rarer than one in one trillion unrelated persons.

In the evening of February 15, 2010, Santa Ana Police Officer David Yettaw was dispatched to the apartment complex from which Olic had just been evicted. Officer Yettaw and several other officers found Olic and ordered him to sit down. He obeyed, but refused to obey four or five commands to roll onto his stomach. When Olic reached toward his stomach, the officers became concerned and tased him.

On February 19, an Orange County District Attorney investigator interviewed Teodor, who told him about the path Olic had taken after the attack. The investigator retraced the path and found a bloody knife under a bush at the southwest corner of the fitness center parking lot. After a crime scene investigation technician removed the knife, blood swabs were taken from the knife blade and handle. DNA tests

of the blood swabs showed only one male profile, and it was consistent with Teodor's DNA profile.

DISCUSSION

I.

The Trial Court Did Not Err by Granting Olic's Request for Self-representation.

Olic contends the trial court erred by granting his *Faretta* request for self-representation. Relying on *Indiana v. Edwards* (2008) 554 U.S. 164 (*Edwards*), he argues the competency standard for self-representation is higher than the competency standard used to determine whether a defendant is mentally fit to stand trial. While Olic does not dispute he was mentally competent to stand trial, he argues his mental health issues rendered him incompetent to represent himself. We conclude the trial court did not err by granting Olic's request for self-representation.

A.

Background

The felony complaint was filed in February 2010, and Olic appeared at arraignment represented by a public defender. Arraignment was continued to March 5, 2010. On that date, Olic filed a *Faretta* waiver on which he initialed each of the admonitions and, at a closed hearing, requested self-representation. The trial court encouraged Olic "at least to give a try with the public defender" and told him "when you're charged with attempted murder and elder abuse, those are such serious charges and can rob you of the rest of your life if convicted. I[] really think you would want to have someone working with you on it." Olic responded his decision to represent himself was "final."

The trial court then read Olic a series of admonitions about self-representation. Olic stated he understood each one. The court asked Olic whether he had been treated for any emotional or mental illness, to which he replied, "[n]o." Olic told the court he did not believe the public defender cared about his case and, on the *Faretta* waiver, Olic had written "Appointed Counsel is ineffective and incompetent."

The court granted Olic's request for self-representation and stated: "[Y]ou seem very competent in understanding the discussion that we just had. Though, the court may disagree with your conclusions, the court doesn't hold that in any way against you. The court does believe that you can represent yourself." The court advised Olic that if he ever changed his mind about self-representation, the court would appoint counsel for him.

On May 14, 2010, the court offered to appoint an attorney and an investigator, "the whole package," so that "everything you want to get done is going to get done." Olic declined the offer, claiming the public defender was ineffective. The court offered the alternate defender instead of the public defender, but Olic declined that offer too. On June 11, the trial court again offered to appoint an attorney and an investigator. Olic again declined, stating, "the problem is investigator wouldn't work for me, but for attorney" and "[a]n attorney, if they decide different type of defense than I chose, it would be pointless." The court urged Olic to accept representation, and once again offered to appoint the alternate defender, but Olic adamantly declined and told the court, "[p]lease don't interfere."

At a hearing on February 9, 2011, it was revealed that a private investigator had been appointed for Olic the previous November, and Olic had given the investigator an eight-page list of 16 tasks. The deputy district attorney stated that, at the court hearing in January 2011, Olic had represented that the investigator told him it would take four weeks to complete the tasks. The court explained to Olic the charges he faced and the jury trial process and asked if Olic understood them. He replied he did and had no doubt or question in his mind.

At the March 28, 2011 hearing on Olic's motion to recuse the deputy district attorney, the trial court commented: "I have read many of your pleadings, including your recusal motion, and the substance and content of your recusal motion was, frankly, better than I sometimes see from lawyers. [¶] So I am not underestimating your intelligence and your legal ability, although I have many times said to you I think it's very difficult for a person who's not trained in the law to represent himself at trial. And I think it's generally a terrible idea because I think the outcome is usually bad for such a defendant. And I've tried to convince you that you should not represent yourself because I'm afraid the outcome will not be the outcome you desire." The trial court acknowledged its obligation to make sure Olic was competent to represent himself and stated, "the thought of legal competency has flashed through my mind." The court found: "But honestly, it has never risen to the level that I felt that I had any legal or ethical obligation to express a doubt about your legal competency because I think you are legally competent."

Although Olic had stated on March 28 he did not intend to participate in the trial, he did so and actively participated in it. He exercised seven peremptory challenges during jury selection, cross-examined the prosecution witnesses, and moved seven exhibits into evidence, successfully arguing for the receipt of one exhibit over the prosecution's objection. Olic made a closing argument in which he contended the prosecution failed to submit evidence linking him to the knife found at the crime scene and his father was not a credible witness.

B.

The Trial Court Did Not Err Under the Law at the Time of Trial.

In *Faretta, supra,* 422 U.S. 806, the United States Supreme Court held the Sixth Amendment to the United States Constitution gives criminal defendants the right to

represent themselves. Before *Faretta* was decided, the law in California had been that a criminal defendant had no constitutional or statutory right to self-representation, except, in noncapital cases, the trial court had discretion to grant a defendant's request for self-representation. (*People v. Sharp* (1972) 7 Cal.3d 448, 459, 461, 463-464.)

"In the wake of *Faretta*'s strong constitutional statement, California courts tended to view the federal self-representation right as absolute, assuming a valid waiver of counsel." (*People v. Taylor* (2009) 47 Cal.4th 850, 872 (*Taylor*).) In other words, a trial court had to grant a defendant's request for self-representation if the defendant voluntarily and intelligently elected to do so, even if the defendant, though competent to stand trial, was not competent to serve as his or her own attorney. (*Id.* at pp. 872-873.)

In *Godinez v. Moran* (1993) 509 U.S. 389 (*Godinez*), the United States Supreme Court appeared to confirm that a separate competence requirement for self-representation did not exist under federal law. In *Godinez*, the defendant sought and was allowed to waive counsel and plead guilty to murder charges in state court. (*Id.* at pp. 391-393.) On petition for a writ of habeas corpus, the federal appeals court held that even though the defendant was competent to stand trial, he was not competent to waive counsel and plead guilty. (*Id.* at pp. 393-394.) The Supreme Court reversed, rejecting the argument that federal law required a higher standard of competence for waiving counsel or pleading guilty than is required to stand trial. (*Id.* at p. 402.) California courts, including the California Supreme Court, generally interpreted *Faretta* and *Godinez* as holding the required degree of competency to stand trial and the required degree of competency to waive counsel were the same. (*Taylor*, *supra*, 47 Cal.4th at pp. 874-876.)

In 2008, the United States Supreme Court decided *Edwards*, *supra*, 554 U.S. 164. In that case, the Indiana state trial court denied the defendant's request for self-representation and found that, while the defendant was competent to stand trial, he was not competent to represent himself at trial. (*Id.* at p. 169.) An Indiana appellate

court ordered a new trial, and the Indiana Supreme Court affirmed the appellate court on the ground *Faretta* and *Godinez* required the trial court to permit the defendant to represent himself. (*Edwards*, *supra*, at p. 169.)

The United States Supreme Court reversed, holding: "[T]he Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* [*v. United States* (1960) 362 U.S. 402] but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." (*Edwards*, *supra*, 554 U.S. at pp. 177-178.) The court called those defendants who are competent to stand trial but not to represent themselves "gray-area defendants." (*Id.* at p. 174.)

Edwards did not hold, as Olic contends, that due process requires a higher standard of mental competence for self-representation than is required to stand trial with counsel. Rather, "[t]he *Edwards* court held only that states *may*, without running afoul of *Faretta*, impose a higher standard . . . ." (*Taylor*, *supra*, 47 Cal.4th at pp. 877-878.) In *Taylor*, the California Supreme Court upheld the trial court's decision to grant the defendant's request for self-representation. (*Id.* at pp. 856, 868, 878-879.) Because *Edwards* did not mandate the application of "'a dual standard of competency for mentally ill defendants,'" that case "does not support a claim of federal constitutional error in a case like the present one, in which defendant's request to represent himself was granted." (*Taylor*, *supra*, p. 878.)

The *Taylor* court also rejected the defendant's argument the trial court should have exercised its discretion, recognized in *Edwards*, to apply a higher standard than competence to stand trial. (*Taylor*, *supra*, 47 Cal.4th at p. 879.) "We reject the claim of error because, at the time of defendant's trial, state law provided the trial court

with no test of mental competence to apply other than the *Dusky* standard of competence to stand trial [citation], under which defendant had already been found competent." (*Ibid.*)

Such was the state of the law when Olic requested self-representation and when he was tried. Here, as in *Taylor*, the trial court's decision to grant the request for self-representation did not support a claim of federal constitutional error. At the time of Olic's trial, California state law did not provide a standard of competence for self-representation different from the standard required to stand trial. As Olic does not deny he was competent to stand trial, he likewise met the competency standard to represent himself at trial.

C.

The Trial Court Did Not Err Under Johnson.

1. *Johnson* Does Not Apply Retroactively.

In 2012, after Olic was tried and after he filed his opening brief, the California Supreme Court decided *Johnson*, *supra*, 53 Cal.4th 519 (Olic argues *Johnson* in his reply brief). The trial court in *Johnson* revoked the defendant's self-representation. (*Id.* at p. 525.) The California Supreme Court had to decide "whether California courts may accept *Edwards*'s invitation and deny self-representation to gray-area defendants." (*Id.* at p. 527.) The Supreme Court concluded that California trial courts have discretion to deny self-representation to gray-area defendants. The court reasoned: "Indeed, to refuse to recognize such discretion would be inconsistent with California's own law. In *People v. Floyd* [(1970)] 1 Cal.3d 694, we upheld the denial of a capital defendant's request for self-representation citing, among other factors, his youth, his low level of education, and his ignorance of the law. [Citation.] Certainly, a defendant who could be denied self-representation under *Edwards*, *supra*, 554 U.S. 164, could also have been denied self-representation under *People v. Sharp*, *supra*, 7 Cal.3d 448, and *People v.*

Floyd. Denying self-representation when *Edwards* permits does not violate the Sixth Amendment right of self-representation. Because California law provides *no* statutory or constitutional right of self-representation, such denial also does not violate a state right. Consistent with long-established California law, we hold that trial courts may deny self-representation in those cases where *Edwards* permits such denial." (*Id.* at p. 528.)

The *Johnson* court considered several different standards by which to measure competence, and concluded: "[P]ending further guidance from the high court, we believe the standard that trial courts considering exercising their discretion to deny self-representation should apply is simply whether the defendant suffers from a severe mental illness to the point where he or she cannot carry out the basic tasks needed to present the defense without the help of counsel." (*Johnson, supra,* 53 Cal.4th at p. 530.)

Olic argues he met that standard, i.e., he suffered mental illness to the point he could not carry out the basic tasks to defend himself without counsel. *Johnson* was decided after Olic was tried and therefore does not apply retroactively to him. Changes in the law—either through legislation or court opinion—which govern the conduct of trials apply prospectively only. (*Johnson, supra,* 53 Cal.4th at p. 531.) "'[A] law governing the conduct of trials is being applied "prospectively" when it is applied to a trial occurring after the law's effective date, regardless of when the underlying crime was committed . . . .'" (*Ibid.*, quoting *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 289.) Application of a change in law that occurred after the crime took place is retroactive only if it changes the legal consequences of a defendant's past conduct. (*Tapia v. Superior Court, supra,* at p. 298.) The *Johnson* decision did not change the legal consequences of Olic's past conduct for which he was charged with attempted murder and elder abuse.

2. Substantial Evidence Supported the Trial Court's Decision Under the *Johnson* Standard of Competence.

Even under the *Johnson* standard for competence, the trial court did not err by granting Olic's request for self-representation. "As with other determinations

regarding self-representation, we must defer largely to the trial court's discretion." (*Johnson*, *supra*, 53 Cal.4th at p. 531.) "The trial court's determination regarding a defendant's competence must be upheld if supported by substantial evidence." (*Ibid.*)

Here, substantial evidence supported the trial court's decision permitting Olic to represent himself. The trial court regularly observed Olic in court and, as early as March 2010, commented he seemed "very competent" and believed he could represent himself. On the waiver of counsel form, Olic represented he had never been treated for emotional or mental illness. Olic prepared sophisticated motions, including a motion to obtain blood and saliva samples from Teodor, a motion to disqualify the prosecutor, a motion to reduce bail, and a motion for proper medical treatment at the jail. At the March 2011 hearing on Olic's motion to recuse the deputy district attorney, the trial court commented: "I have read many of your pleadings, including your recusal motion, and the substance and content of your recusal motion was, frankly, better than I sometimes see from lawyers."

Olic actively participated in trial and competently represented himself. He skillfully cross-examined witnesses, including forensic scientists testifying on DNA evidence. Olic's closing argument was capable, and demonstrated he understood the case, the evidence, and his defenses. For example, he argued there were no eyewitnesses to the crime, no police investigator was sent to the crime scene, the knife was not located until 10 days later, and his DNA was not found on the knife. Olic pointed out inconsistencies in Teodor's testimony and in Chagoya's testimony, and emphasized the prosecution's burden of proof. Olic's conduct through the case demonstrated that whatever mental illness he might have had did not impair his ability to carry out the basic tasks needed to present his defense without the help of counsel.

The basis for Olic's argument that the trial court erred in granting self-representation is various documents and pleadings in which Olic made wild accusations of conspiracies. In particular, he charged the prosecutor and jail authorities

with conspiring to starve him to death and to sabotage his defense, made strange statements about "white Nazi racists running Orange Count[y]," and claimed the whole world would be watching his trial "similar to the trial [of] Jesus 2000 years ago" (underscoring omitted). However, "[m]ore is required than just bizarre actions or statements by the defendant to raise a doubt of competency." (*People v. Marshall* (1997) 15 Cal.4th 1, 33.) The trial court saw those same documents but also observed Olic in court and concluded he was competent to represent himself. We defer to the trial court's exercise of its discretion.

II.

CALCRIM No. 372 Does Not Violate Due Process.

Olic argues the trial court erred by giving CALCRIM No. 372[2] because it "allowed the jury to make a permissive inference from [his] conduct of fleeing or attempting to flee following the commission of the crime." He argues: "CALCRIM No. 372 refers to the defendant being 'aware of his guilt'— an awareness which could not exist unless the defendant were in fact guilty. In effect, the instruction permitted the jury to infer one fact, guilt, from another fact, i.e., flight from the scene of the crime."

In *Ríos, supra*, 151 Cal.App.4th at pages 1158-1159, the Fifth District Court of Appeal rejected the very same argument. The *Ríos* court reasoned: "On whether a flight instruction permitting a jury to infer 'awareness of guilt' is constitutional, the California Supreme Court's rejection of an analogous challenge to CALJIC No. 2.52 is instructive. In *People v. Mendoza* (2000) 24 Cal.4th 130 . . .

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[2] CALCRIM No. 372 states: "If the defendant fled [or tried to flee] immediately after the crime was committed/ [or] after (he/she) was accused of committing the crime), that conduct may show that (*he/she*) *was aware of* (*his/her*) *guilt*. If you conclude that the defendant fled [or tried to flee], it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled [or tried to flee] cannot prove guilt by itself." (Italics added.)

(*Mendoza*), the defense argued that 'the instruction creates an unconstitutional permissive inference because it cannot be said with "'substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.'"' (*Id.* at p. 179.) Noting that a permissive inference violates due process 'only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury,' *Mendoza* held that permitting 'a jury to infer, if it so chooses, that the flight of a defendant immediately after the commission of a crime indicates a *consciousness of guilt*' is not violative of due process. (*Id*. at p. 180, italics added.) [¶] Our short etymological analysis of Ríos's argument begins with a dictionary definition of the word 'aware': 'Having knowledge or cognizance.' (American Heritage Dict. (4th ed. 2000) p. 125.) In reliance on the dictionary's list of synonyms that include the word 'aware,' Ríos argues that the word 'implies knowledge gained through one's own perceptions or by means of information.' (Italics omitted; see *ibid*.) 'Conscious,' another word on the list, 'emphasizes the recognition of something sensed or felt' (*id.*, at p. 125, italics omitted), which, of course, focuses on the acquisition of knowledge not by 'information' but by 'perceptions.' (*Ibid*.) Since the dictionary defines 'consciousness' as '[s]pecial awareness or sensitivity: class consciousness; race consciousness' (*id*. at p. 391, italics omitted), ipso facto the special awareness that *Mendoza* allows a jury to infer from a flight instruction is 'guilt consciousness' (in the syntax of the dictionary) or 'consciousness of guilt' (in the syntax of the California Supreme Court). (Compare American Heritage Dict., *supra*, at p. 391 (italics omitted) with *Mendoza*, *supra*, 24 Cal.4th at p. 180.) As the inference in *Mendoza* passes constitutional muster, so does the inference here." (*Ibid.*)

We agree with *Ríos* and adopt its reasoning.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.